

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EDWARD J. NICHOLAS,

Plaintiff,

v.

CHIEF CHARLES KELLAR, et al.,

Defendants.

Civil Action No. 08-13 Erie

**MEMORANDUM ORDER**

This civil rights action was received by the Clerk of Court on January 10, 2008.

The Magistrate Judge's Report and Recommendation [Doc. No. 2], filed on January 11, 2008, recommended that Plaintiff's motion for leave to proceed *in forma pauperis* be denied and that his complaint be dismissed without prejudice to Plaintiff's right to pay the filing fee of \$350.00 before February 1, 2008. Plaintiff was allowed ten (10) days from the date of service to file objections. The Report and Recommendation was served on Plaintiff in accordance with Fed. R. Civ. P. 5(b)(2)(B) by sending a copy via certified mail to the last address of record provided by Plaintiff; however, that mailing was returned to the Court on January 22, 2008 with the notation "Return to Sender[,] Unable to Forward." During a telephonic conference held on February 20, 2008, this Court received information from the Pennsylvania Board of Probation and Parole that Plaintiff is considered to be an absconder with no presently valid address. Accordingly, copies of the Report and Recommendation, and this Memorandum Order, will be designated for Plaintiff and left with the clerk of the court in accordance with Fed. R. Civ. P. 5(b)(2)(C).

AND NOW, this 20<sup>th</sup> day of February, 2008, after de novo review of the motion and documents in the case, together with the Report and Recommendation,

IT IS HEREBY ORDERED that Plaintiff's motion for leave to proceed *in forma pauperis* is DENIED and his complaint is DISMISSED for failure of Plaintiff to pay the

filing fee of \$350.00 before February 1, 2008.

The Report and Recommendation [Doc. No. 2] of Magistrate Judge Baxter, filed on January 11, 2008, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin  
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Sean J. McLaughlin  
United States District Judge

cm: All parties of record  
Susan Paradise Baxter, Chief U.S. Magistrate Judge